

Claimant's history is significant in that she had a work-related injury in 1994. Claimant settled that matter with a 20 percent impairment to the body as a whole for the injuries to her lumbar spine. MRI reports taken at that time showed a disc protrusion at midline on the right at the L4-5 level with narrowing at the spinal canal. Claimant was permanently restricted to lifting no more than 20 pounds from that injury. Claimant did not work again until she went to work for respondent on December 14, 1999. Prior to that, in November 1999, claimant underwent a preemployment physical with Dr. Murphy, which she passed. There was an indication at that time of arthritis in both claimant's neck and back. When claimant began working for respondent, she failed to advise respondent of the 20-pound lifting restriction from the 1994 accident.

On July 1, 2000, claimant was moving boxes at home when she suffered an injury to her low back. Dr. Murphy's report indicated she was symptomatic in the low back, but she did not have radicular symptoms into her lower extremities. Claimant was taken off work for all or part of several days. She returned to work with the same 20-pound lifting restriction.

On July 12, 2000, while claimant was attempting to lift a patient, the patient wrapped his arms around claimant's neck as claimant was in a bent-over position. Claimant assisted the patient into wheelchair. But when she stood up, she felt intense low back pain with pain radiating into her right leg. Claimant notified her supervisor and filled out an accident report. However, the accident report failed to mention any right leg radiculopathy. Claimant missed no work as a result of that accident. The July 13, 2000, office note of Dr. Murphy does discuss the fact that claimant was doing better with her low back symptoms until she "went to lift a resident last night by herself and the back pain flared up."

The Board acknowledges substantial conflicts in both the medical evidence and testimony in this matter. However, it does appear for preliminary hearing purposes that claimant suffered an aggravation to her low back on July 12, 2000, while assisting a resident into a wheelchair.

In workers compensation litigation, the burden of proof is on claimant to establish her right to an award of compensation by proving the various conditions upon which her right depends by a preponderance of the credible evidence. K.S.A. 44-501 and K.S.A. 44-508(g).

It is the function of the trier of fact to decide which testimony is more accurate and/or credible and to adjust the medical testimony along with the testimony of the claimant and any other testimony which may be relevant to the question of disability. Tovar v. IBP, Inc., 15 Kan. App. 2d 782, 817 P.2d 212, *rev. denied* 249 Kan. 778 (1991).

The Appeals Board finds that claimant has proven that she suffered a work-related aggravation of her preexisting back problem on July 12, 2000. While the full extent of this aggravation is not ascertainable at this time, it does, nevertheless, entitle claimant to medical treatment as may be reasonably necessary to cure and relieve her from the effects of that injury. Therefore, the Order of the Administrative Law Judge should be affirmed.

As provided by statute, preliminary hearing awards are not binding upon the parties, but are subject to a full hearing on the claim.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated March 9, 2001, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 2001.

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BOARD MEMBER

c: Jan L. Fisher, Topeka, KS  
John F. Carpinelli, Topeka, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director